THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.3979 of 2005

DATED 02.11.2006

Between
S.Anthony. .. PETITIONER

versus

The City Planner, Municipal Corporation of
Hyderabad, Secunderabad Zone
Secunderabad and three others. .. RESPONDENTS

WRIT PETITION No.3979 of 2005

ORDER:

Heard both the learned counsel.

2. Though the matter is coming under Interlocutory caption, both the learned counsel requested for final disposal of the Writ Petition.

3. The Writ Petition is filed for a Writ of Mandamus declaring that the acts, deeds and things of the respondents in not approving the plans submitted by the petitioner vide bearing No.1809/TP/MCHSD/B/03/213/A, dated 21.5.2003 for house bearing No.11-2-15/2, Seethaphalmandi, Secunderabad, are illegal, against to law, against to the provisions of Hyderabad Municipal Corporation Act, 1955 and much against the legal and fundamental rights guaranteed under the Constitution of India and consequently direct the respondents to approve the plans submitted by the petitioner for the construction of ground and first floors in the existing house bearing No.11-2-15/2, Seethaphalmandi, Secunderabad, as per plans submitted by the petitioner bearing No.1809/TP/MCHSD/B/03/213/A, dated 21.5.2003 and pass such

other suitable orders.

4. It is stated by the writ petitioner that he is the absolute owner and possessor of house bearing No.11-2-15/2, Seethaphalmandi, Secunderabad, having purchased the same from K.Saibaba under a registered sale deed dated 26.11.1993, registered in the office of Deputy Joint Sub-Registrar, Maredpally, Secunderabad, bearing document No.3030 of 1993. The petitioner's vendor K.Saibaba and his brother K.Saibabuji have got partitioned between themselves the house bearing No.11-2-15/2, vide partition deed dated 18.2.1991, on the basis of a Will executed by their late mother Smt.K.Laxmikanthamma and the partition deed had also registered in the office of Sub-Registrar, Maredpally, Secunderabad, bearing document No.444 of 1991. As per the registered partition deed, the petitioner's vendor got the house structures and land admeasuring 114 square yards of the land. After the purchase of the above house by the petitioner, his name had also been mutated in the records of respondents and house tax is also being paid to them. It is also further stated in paragraph 3 of the affidavit that after getting the share under the above said registered partition deed, K.Saibabuji, the brother of the petitioner's vendor, had already raised structures in his share in the house. While making new constructions, K.Saibabuji since have encroached upon the common passage, the vendor of the petitioner had filed OS No.1234 of 1991 on the file of the XVIII Assistant Judge, City Civil Court, Secunderabad, for demolition of structures made in the common passage. After the petitioner's purchasing the property, he got impleaded as plaintiff No.2 in OS No.1234 of 1991, and the said suit had been decreed with costs as prayed for on 20.12.1997. The Municipal Corporation of

Hyderabad, Secunderabad Division is defendant No.2 in the said suit. K.Saibabuji filed AS No.15 of 1998 against the judgment and decree in OS No.1234 of 1991 and the same was dismissed on 25.10.2004 by the XX Additional Chief Judge, Secunderabad. It is further stated that the petitioner applied for sanction of plans to the respondents 1 and 2 for the construction of new structures on ground floor and first floor by dismantling the existing house. K.Saibabuji, the brother of the petitioner's vendor since having disputes with the petitioner and his vendor, seems to have lodged a complaint to the respondents 1 and 2. As per the petitioner's information it is believed that after receiving illegal gratification have chosen to issue a letter dated 10.6.2003 bearing reference No.1809/TP/MCHSD/B/03/213/A, informed to the petitioner that the permission sought by him is refused on the ground that (1) he should remove existing ground floor. Further there is Court case as informed by the complainant as Court proceedings are pending; (2) Nos.15/98 and 191/1997 in the City Civil Court, Secunderabad submit the documents and court papers. After acknowledging the above, the petitioner addressed a letter dated 4.7.2003 to the 1st respondent and requested to approve the plans submitted by him, along with Xerox copies of (1) judgment and decree dated 20.12.1997; (2) partition deed dated 18.2.1991; (3) Release Deed dated 10.10.1988; (4) 3 letters of the sisters; (5) plaint copy in OS No.191/97; (6) written statement in OS No.191/97. After acknowledging the reply from the petitioner dated 4.7.2003, the 1st respondent directed him vide his letter dated 10.10.2003 to submit some documents namely, (1) Copy of registered sale deed dated 24.10.1956 (document No.1078 of 1956); (2) Will dated 9.4.1987

executed by Smt.K.Laxmikanthamma; (3) Death Certificate showing the date of death of Smt.K.Laxmikanthamma; (4) plan enclosed to the partition deed dated 18.2.1991 is not exhibiting red and green colours. This defect requires rectification; (5) The Deed of Release on Rs.5/- is invalid and to be registered; (6) NOC issued by the daughters are not bearing dates and place. They cannot extinguish their rights in immovable property. They are invalid. The petitioner sent a reply dated 7.5.2004 for the notice dated 10.10.2003 requesting to approve the plans submitted reference bearing No.1809/TP/MCHSD/B/03/213/A, for the construction of new structures over his house bearing No.11-2-15/2, situated at Seethaphalmandi, Secunderabad, without further delay as otherwise, he will be constrained to initiate appropriate legal proceedings, and also submitted copies to (1) The Commissioner, Municipal Corporation of Hyderabad, Tank Bund (Near), Hyderabad; (2) The Additional Commissioner, Municipal Corporation of Hyderabad, Secunderabad Division, Secunderabad; (3) The Secretary, Municipal Administration, A.P. Secretariat Buildings, Hyderabad; (4) copy submitted to the Hon'ble Chief Minister, Govt. of A.P. for favour of information and to do justice to the petitioner. Again the respondent had sent a letter dated 26.6.2004 stating OS No.191/97 filed by one of the daughter of late Smt. Laxmikanthamma against her remaining two daughters and two sons and the petitioner in the Court of III Additional Chief Judge, City Civil Court, Secunderabad, regarding $1/5^{th}$ of the share in the property left by late Smt. Laxmikanthamma. The petitioner had sent a letter dated 28.7.2004 to the Hon'ble Chief Minister of Andhra Pradesh marking copies to the Hon'ble M.L.A.

Secunderabad Constituency and to the 3rd respondent for getting redressal, but he had not received any information from the 3rd respondent or from the Government. The petitioner had sent a letter dated 5.8.2004 to the 1st respondent marking copies to the respondents 3 to 5 stating that OS No.191 of 1997, pending on the file of III Senior Civil Judge, Secunderabad, need not be taken into consideration for the simple reason that the daughters of late Smt. Laxmikanthamma are not having any right to her property. Again the petitioner had sent a letter dated 3.9.2004 to the respondents requesting to process his plans without least delay. The 1st respondent had sent a letter dated 10.11.2004 which was served on the petitioner on 20.11.2004 directing him to submit the same documents. It is also further stated that in spite of lengthy correspondence, the respondents had not chosen to approve the plans of the petitioner submitted to them on 21.5.2003 and as such the petitioner got issued a statutory notice under Section 685 of HMC Act and Section 80 of C.P.C. stating all the facts and he craved the leave of this Court to read the legal notice dated 25.11.2004 as part and parcel of the affidavit. It is further stated that non-approval of the plans submitted by the petitioner on 21.5.2003 is nothing but abusive of the authority of the respondents and disentitling him for the construction of new structures by demolishing the existing old structures which is in fact and which cannot be denied by any person that the same is in dilapidated condition. The petitioner had already stated the same fact in his letter dated 7.5.2004, which was acknowledged by the respondents. In spite of the reasons given by the petitioner and submitted the documents which were required by the 1st

respondent, still the respondents have not chosen to approve the plans on the illegal ground of OS No.191 of 1997 is pending before the III Senior Civil Judge, Secunderabad, for partition of the above said house. The petitioner had categorically, specifically and without any ambiguity stated that the said proceedings are nothing to do with the approval of the plans submitted by him. The respondents are dragging and prolonging in not approving the plans submitted by the petitioner long back. It is the settled law that MCH is not a Court of law to decide the title for the petitioner's property and non-approval of the plans is nothing but abusive in discharge of the functions of the public servant. The petitioner suspects that the respondents 1 and 2 might have withhold the approval of plans for obvious reasons and considerations presumably the office of the 1st and 2nd respondents might have received illegal gratification from the brother of the petitioner's vendor. The petitioner had purchased the property in the year 1993 for consideration and obtained the registered sale deed. Before that, the petitioner's vendor and his brother got partitioned the above house property by way of registered partition deed in the year 1991. The registered documents itself speaks the title of the petitioner. Mere pendency of a false and fictitious claim which was abetted by and at the instance of the brother of the petitioner's vendor, is evidently found in the notice dated 10.6.2003 sent by the 1st respondent. The petitioner had already stated in his notices that respondents 1 and 2 allowed to raise new structures by K.Saibabuji in his share got under the registered partition deed by duly dismantling the then existing old structures. The petitioner was not allowed to construct ground and first floors in the existing

old and dilapidated condition of the house. It is also further stated that it was held by this Court that 'the Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of he applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more (*Hyderabad Potteries (Pvt) Limited vs. Collector, Hyderabad District and another* – 2001(3) ALT 200)'. It is also stated that the respondents after acknowledging the statutory notice had sent reply notices dated 2.12.2004 and 23.12.2004 to the counsel of the petitioner reiterating what they had stated in the above notices. The contentions of the respondents cannot sustain for approving the plans and they are not entitled to decide the petitioner's title as per the above judgment of this Court. As on this day, the petitioner is in possession and enjoyment of his house and remitting the house tax to the respondents and his name also was mutated in their records. The petitioner want to construct his house at his risk, irrespective of the result of the above suit filed by the sister of his vendor and for which the respondents should

not be allowed to contend and object for approval of the plans submitted by him. Even though the petitioner got issued statutory notice to the respondents claiming damages also, reserving his right to claim damages against the respondents for their inaction in civil Court, he is entitled and having locus standi to maintain this Writ Petition since the respondents have abused their official position in discharging their legitimate duties under the provisions of Section 428 to 432, under Chapter XII of Hyderabad Municipal Corporation Act, 1955. The respondents are under an obligation to discharge their duties in accordance with the provisions of law and they cannot go beyond the provisions of law in not approving the plans submitted by the petitioner and their actions are *mala fide*, arbitrary and against law which affecting his legal and constitutional rights guaranteed under the Constitution of India. In such circumstances, the petitioner approached this Court praying for the relief referred to supra. It is also stated at this stage that the suit for partition OS No.191 of 1997 on the file of III Senior Civil Judge, Secunderabad was dismissed without costs on 29.3.2005.

5. In the counter affidavit filed by respondents 2 and 3 it was stated that the petitioner had applied for building permission for ground and first floors by dismantling the existing house. Pending consideration of the building application one K.Sai Babuji and brother of the petitioner had filed a complaint/objections, informing that the title of the property among the vendor of the petitioner and his sister is in dispute before the Civil Court in OS Nos.15 of 1998 and 191 of 1997, therefore, no permission can be granted in favour of the petitioner. After examining the building application and the objections filed by K.Sai Babuji, the respondent-Corporation issued

proceedings No.1809/TP/MCH/82/B/03/213/A, refusing the permission, on the ground that OS Nos.15 of 1998 and 191 of 1997 regarding the title dispute are pending. The petitioner was also asked not to proceed with the construction till he obtained specific permission. The petitioner had once again requested the respondent-Corporation to approve his plans by letter dated 4.7.2003 and subsequent letters by submitting certain copies of documents and on examining all the documents filed by the petitioner, the respondent-Corporation had found certain deficiencies and informed the petitioner vide its letter No.1809/TP/MCHSD/B1/2003, dated 10.10.2004. The petitioner was asked to submit the following: (1) Copy of registered sale deed dated 24.10.1956 (document No.1078/56; (2) Will dated 9.4.1987 executed by Smt.K.Laxmikanthamma; (3) Death certificate showing the date of death of Smt.K.Laxmikanthamma; (4) The plan enclosed to the partition dated 18.2.1991 is not exhibiting red and green colours. This defect requires rectification; (5) The deed of Release on Rs.5/- is invalid and to be registered and (6) NOC issued by the daughters are not bearing dates and place. They cannot extinguish their rights in immovable property. They are invalid. It was also further informed the petitioner that one of the daughter of Smt.Laxmikanthamma filed OS No.191 of 1997 against other two daughters in respect of the property (in which the property of the petitioner is part and parcel) and the same is pending before the civil Court. In such circumstances, the rejection of building application of the petitioner is in accordance with the provisions of Hyderabad Municipal Corporation Act, 1955.

6. In the light of the respective stands taken by the parties,

this Court is satisfied that the rejection made is not in accordance with law and the same is hereby set aside. In the light of the facts and circumstances, the 1st respondent-The City Planner, Municipal Corporation of Hyderabad, Secunderabad Zone, Secunderabad is hereby directed to consider and dispose of the application of the petitioner afresh in accordance with law not being influenced by the litigations referred to in the counter affidavit. Accordingly, the 1st respondent is hereby directed to dispose of the application for building plan as referred to supra within a period of four (04) weeks from the date of receipt of a copy of the order.

7. The Writ Petition is allowed to the extent indicated above. No costs.

02.11.2006

SSR
Issue order copy tomorrow.
(BO)